

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
DECEMBER 15, 2020**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED ORDER MODIFYING CONDITION 23 OF THE WATER QUALITY CERTIFICATION FOR YUBA COUNTY WATER AGENCY'S YUBA RIVER DEVELOPMENT PROJECT.

DISCUSSION

Yuba County Water Agency (YCWA) (doing business as Yuba Water Agency) applied to the Federal Energy Regulatory Commission (FERC) to relicense the Yuba River Development Project (Project) on April 21, 2014. The Project is also known as FERC Project No. 2246. The Project is located on Oregon Creek and the Yuba, North Yuba, and Middle Yuba Rivers in Nevada, Sierra, and Yuba counties. The Project's installed capacity is 361 megawatts. YCWA first applied for water quality certification (certification) from the State Water Resources Control Board (State Water Board) for the Project on August 24, 2017.

Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Section 401 of the Clean Water Act directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law. Section 401 further provides that certification conditions shall become conditions of any federal license or permit for the Project. The State Water Board is the state agency responsible for such certification in California. (Wat. Code § 13160.) The State Water Board has delegated this function to the Executive Director by regulation. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

On July 17, 2020, the State Water Board Executive Director issued a certification for the Project. The certification included Condition 23, which states:

Issuance of this certification shall become effective upon the earliest of: a grant of rehearing of FERC's May 22, 2020 order finding waiver of the State Water Board's water quality certification authority; issuance of a judicial order overturning that order; or issuance of another judicial or administrative action finding that FERC improperly found waiver of the State Water Board's certification authority. Unless and until such action overturning FERC's finding of waiver, this certification shall not be considered a final action for the purposes of Water Code section 13160 regarding reconsideration or for administrative review.

Despite the provision stating that the certification issued on July 17, 2020, was not a final action for purposes of initiating petitions for reconsideration, on August 14, 2020, YCWA filed a petition for reconsideration of the Project's certification. The proposed Order revises Condition 23 to remove the hold on the petition for reconsideration period. If adopted, interested parties will have 30 days from the date of the Order's adoption to file petitions for reconsideration of the July 17, 2020 Project certification, in accordance with the provisions of California Code of Regulations title 23, section 3867(c). YCWA may also supplement its petition or file a new petition for reconsideration for the Project certification during the 30-day period following adoption of the proposed Order.

The proposed Order amends Condition 23 to align with language used in other recently issued certifications for which FERC has issued waiver orders, including correcting a citation error to the authority governing State Water Board reconsideration.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed Order.